

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

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§ 2661. Miscellaneous administrative provisions relating to real property

(a) AVAILABILITY OF OPERATION AND MAINTENANCE FUNDS.—Appropriations for operation and maintenance of the active forces shall be available for the following:

(1) The repair of facilities.

(2) The installation of equipment in public and private plants.

(b) LEASING AND ROAD MAINTENANCE AUTHORITY.—The Secretary of Defense and the Secretary of each military department may provide for the following:

(1) The leasing of buildings and facilities (including the payment of rentals for special purpose space at the seat of Government). Rental for such leases may be paid in advance in connection with—

(A) the conduct of field exercises and maneuvers; and

(B) the administration of the Act of July 9, 1942 (43 U.S.C. 315q).

(2) The maintenance of defense access roads which are certified to the Secretary of Transportation as important to the national defense under the provisions of section 210 of title 23.

[(c) Transferred.]

(d) TREATMENT OF PENTAGON RESERVATION.—In this chapter, the terms “Secretary concerned” and “Secretary of a military department” include the Secretary of Defense with respect to the Pentagon Reservation.

(Added Pub. L. 100–370, Sec. 1(1)(3), July 19, 1988, 102 Stat. 849; amended Pub. L. 108–375, div. B, title XXVIII, Sec. 2821(a)(1), (e)(1), Oct. 28, 2004, 118 Stat. 2129, 2130; Pub. L. 109–163, div. B, title XXVIII, Sec. 2821(d), (e), Jan. 6, 2006, 119 Stat. 3512.)

[§ 2661a. Repealed. Pub. L. 97–295, Sec. 1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

§ 2662. Real property transactions: reports to congressional committees

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until the Secretary submits a report, subject to paragraph (3), to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(A) An acquisition of fee title to any real property, if the estimated price is more than \$750,000.

(B) A lease of any real property to the United States, if the estimated annual rental is more than \$750,000.

(C) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than \$750,000.

(D) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than \$750,000.

(E) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than \$750,000.

(F) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

(2) If a transaction covered by subparagraph (A) or (B) of paragraph (1) is part of a project, the report shall include a summary of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made. The report required by this subsection concerning any report of excess real property described in subparagraph (E) of paragraph (1) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

(3) The authority of the Secretary of a military department to enter into a transaction described in paragraph (1) commences only after—

(A) the end of the 30-day period beginning on the first day of the month with respect to which the report containing the facts concerning such transaction, and all other such proposed transactions for that month, is submitted under paragraph (1); or

(B) the end of the 14-day period beginning on the first day of that month when a copy of the report is provided in an electronic medium pursuant to section 480 of this title on or before the first day of that month.

(4) The report for a month under this subsection may not be submitted later than the first day of that month.

(b) ANNUAL REPORTS ON CERTAIN MINOR TRANSACTIONS.—The Secretary of each military department shall submit annually to the congressional committees named in subsection (a) a report on transactions described in subsection (a) that involve an estimated value of more than \$250,000, but not more than \$750,000.

(c) GEOGRAPHIC SCOPE; EXCEPTED PROJECTS.—This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) STATEMENTS OF COMPLIANCE IN TRANSACTION INSTRUMENTS.—A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) Notice and Wait Regarding Leases of Space for DoD by GSA.—No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Admin-

istration at an annual rental in excess of \$750,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(f) Reports on Transactions Involving Intelligence Components.—Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the congressional committees named in subsection (a) shall be submitted concurrently to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(g) EXCEPTIONS FOR TRANSACTIONS FOR WAR AND CERTAIN EMERGENCY AND OTHER OPERATIONS.—(1) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection, and the reporting requirement set forth in subsection (e) shall not apply with respect to a real property transaction otherwise covered by that subsection, if the Secretary concerned determines that the transaction is made as a result of any of the following:

- (A) A declaration of war.
- (B) A declaration of a national emergency by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).
- (C) A declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
- (D) The use of the militia or the armed forces after a proclamation to disperse under section 334 of this title.
- (E) A contingency operation.

(2) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that—

- (A) an event listed in paragraph (1) is imminent; and
- (B) the transaction is necessary for purposes of preparation for such event.

(3) Not later than 30 days after entering into a real property transaction covered by paragraph (1) or (2), the Secretary concerned shall submit to the committees named in subsection (a) a report on the transaction. The report shall set forth any facts or information which would otherwise have been submitted in a report on the transaction under subsection (a) or (e), as the case may be, but for the operation of paragraph (1) or (2).

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; June 25, 1959, Pub. L. 86–70, Sec. 6(c), 73 Stat. 142; June 8, 1960, Pub. L. 86–500, title V, Sec. 511(1), 74 Stat. 186; July 12, 1960, Pub. L. 86–624, Sec. 4(c), 74 Stat. 411; Oct. 27, 1971, Pub. L. 92–145, title

VII, Sec. 707(5), 85 Stat. 412; Oct. 25, 1972, Pub. L. 92-545, title VII, Sec. 709, 86 Stat. 1154; Dec. 27, 1974, Pub. L. 93-552, title VI, Sec. 610, 88 Stat. 1765; Oct. 7, 1975, Pub. L. 94-107, title VI, Sec. 607(5), (6), 89 Stat. 566; Sept. 30, 1976, Pub. L. 94-431, title VI, Sec. 614, 90 Stat. 1367; Oct. 10, 1980, Pub. L. 96-418, title VIII, Sec. 805, 94 Stat. 1777; Sept. 29, 1988, Pub. L. 100-456, div. B, title XXVIII, Sec. 2803, 102 Stat. 2115; Nov. 5, 1990, Pub. L. 101-510, div. A, title XIII, Sec. 1311(6), 104 Stat. 1670; Oct. 24, 1992, Pub. L. 102-496, title IV, Sec. 403(a)(1), (2)(A), 106 Stat. 3185; Feb. 10, 1996, Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(23), div. D, title XLIII, Sec. 4321(b)(21), 110 Stat. 505, 673; Oct. 17, 1998, Pub. L. 105-261, div. B, title XXVIII, Sec. 2811, 112 Stat. 2204; Oct. 5, 1999, Pub. L. 106-65, div. A, title X, Sec. 1067(1), 113 Stat. 774; Oct. 30, 2000, Pub. L. 106-398, Sec. 1 [div. B, title XXVII, Sec. 2811], 114 Stat. 1654, 1654A-416; Pub. L. 108-136, div. A, title X, Sec. 1031(a)(27), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 108-375, div. A, title X, Sec. 1084(d)(22), Oct. 28, 2004, 118 Stat. 2062.)

§ 2663. Land acquisition authorities

(a) ACQUISITION OF LAND BY CONDEMNATION FOR CERTAIN MILITARY PURPOSES.—(1) Subject to subsection (f), the Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(A) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(B) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(C) the development and transmission of power for the operation of plants under subparagraph (B).

(2) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under paragraph (1), take and use the land to the extent of the interest sought to be acquired.

(b) ACQUISITION BY PURCHASE IN LIEU OF CONDEMNATION.—The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(c) ACQUISITION OF LOW-COST INTERESTS IN LAND.—(1) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than \$750,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; and

(B) does not cost more than \$1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(3) This subsection does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than 750,000, in the case of an acquisition under paragraph

(1), or \$1,500,000, in the case of an acquisition under paragraph (2).

(4) Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this subsection.

(d) ACQUISITION OF INTERESTS IN LAND WHEN NEED IS URGENT.—(1) The Secretary of a military department may acquire any interest in land in any case in which the Secretary determines that—

(A) the acquisition is needed in the interest of national defense;

(B) the acquisition is required to maintain the operational integrity of a military installation; and

(C) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(2) Not later than 10 days after the date on which the Secretary of a military department determines to acquire an interest in land under the authority of this subsection, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives written notice containing a description of the property and interest to be acquired and the reasons for the acquisition.

(3) Appropriations available for military construction may be used for the purposes of this subsection.

(e) SURVEY AUTHORITY; ACQUISITION METHODS.—Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(f) ADVANCE NOTICE OF USE OF CONDEMNATION.—(1) Before commencing any legal proceeding to acquire any interest in land under subsection (a), including acquisition for temporary use, by condemnation, eminent domain, or seizure, the Secretary of the military department concerned shall—

(A) pursue, to the maximum extent practicable, all other available options for the acquisition or use of the land, such as the purchase of an easement or the execution of a land exchange; and

(B) submit to the congressional defense committees a report containing—

(i) a description of the land to be acquired;

(ii) a certification that negotiations with the owner or owners of the land occurred, and that the Secretary tendered consideration in an amount equal to the fair market value of the land, as determined by the Secretary; and

(iii) an explanation of the other approaches considered for acquiring use of the land, the reasons for the acquisition of the land, and the reasons why alternative acquisition strategies are inadequate.

(2) The Secretary concerned may have proceedings brought in the name of the United States to acquire the land after the end of the 21-day period beginning on the date on which the report is received by the committees or, if over sooner, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(g) EXCEPTION TO ADVANCE NOTICE REQUIREMENT.—If the Secretary of a military department determines that the use of condemnation, eminent domain, or seizure to acquire an interest in land is required under subsection (a) to satisfy a requirement vital to national security, and that any delay would be detrimental to national security or the protection of health, safety, or the environment, the Secretary may have proceedings brought in the name of the United States to acquire the land in advance of submitting the report required by subsection (f)(1)(B). However, the Secretary shall submit the report not later than seven days after commencement of the legal proceedings with respect to the land.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 85–861, Sec. 33(a)(14), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 109–163, div. B, title XXVIII, Sec. 2821(a), Jan. 6, 2006, 119 Stat. 3511; Pub. L. 109–364, div. B, title XXVIII, Sec. 2821(b), Oct. 17, 2006, 120 Stat. 2474.)

§ 2664. Limitations on real property acquisition

(a) AUTHORIZATION FOR ACQUISITION REQUIRED.—No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(b) COMMISSIONS ON LAND PURCHASE CONTRACTS.—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is two percent of the purchase price.

(c) COST LIMITATIONS.—(1) Except as provided in paragraph (2), the cost authorized for a land acquisition project may be increased by not more than 25 percent of the amount appropriated for the project by Congress or 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser, if the Secretary concerned determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress.

(2) Until subsection (d) is complied with, a land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser.

(d) CONGRESSIONAL NOTIFICATION.—The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts relating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the congressional defense committees. A contract for the acquisition may then be awarded only after a period of 21 days elapses from the date the notification is received by the committees or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided in an electronic medium pursuant to section 480 of this title.

(e) PAYMENT OF JUDGEMENTS AND SETTLEMENTS.—The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(Added Pub. L. 85–861, Sec. 1(51), Sept. 2, 1958, 72 Stat. 1460, Sec. 2676; amended Pub. L. 93–166, title VI, Sec. 608(2), Nov. 29, 1973, 87 Stat. 682; Pub. L. 97–214, Sec. 5, July 12, 1982, 96 Stat. 170; Pub. L. 98–407, title VIII, Sec. 802, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 99–661, div. A, title XIII, Sec. 1343(a)(17)(A), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 102–190, div. B, title XXVIII, Sec. 2870(1), Dec. 5, 1991, 105 Stat. 1562; Pub. L. 107–217, Sec. 3(b)(14), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, Sec. 1062(a)(11), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(30), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 108–375, div. A, title X, Sec. 1084(b)(4), Oct. 28, 2004, 118 Stat. 2061; renumbered Sec. 2664 and amended Pub. L. 109–163, div. B, title XXVIII, Sec. 2821(a)(10), (b)–(d), Jan. 6, 2006, 119 Stat. 3512.)

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department, may sell to any person or foreign government any interest in land that is acquired for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department in which the Coast Guard is operating.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Appropriations of the Department of Defense may be reimbursed for all costs of production of forest products pursuant to this section from amounts received as proceeds from the sale of any such property.

(e)(1) Each State in which is located a military installation or facility from which forest products are sold in a fiscal year is entitled at the end of such year to an amount equal to 40 percent of (A) the amount received by the United States during such year as proceeds from the sale of forest products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) during such year attributable to such installation or facility.

(2) The amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.

(3) In a case in which a military installation or facility is located in more than one State or county, the amount paid pursuant to paragraph (1) shall be distributed in a manner proportional to the area of such installation or facility in each State or county.

(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense for the purposes of this section. Balances in the account may be used for costs of the military departments—

(A) for improvements of forest lands;

(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

(C) for natural resources management that implements approved plans and agreements.

(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

(A) reimbursements of appropriations made under subsection (d), and

(B) payments made to States under subsection (e).

(3) The reserve account may not exceed \$4,000,000 on December 31 of any calendar year. Unobligated balances exceeding \$4,000,000 on that date shall be deposited into the United States Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149; Aug. 1, 1977, Pub. L. 95–82, title VI, Sec. 610, 91 Stat. 378; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 511(91), 94 Stat. 2928; Aug. 6, 1981, Pub. L. 97–31, Sec. 12(3)(B), 95 Stat. 153; Dec. 23, 1981, Pub. L. 97–99, title IX, Sec. 910(a), 95 Stat. 1386; Oct. 12, 1982, Pub. L. 97–295, Sec. 1(33), 96 Stat. 1296; Aug. 28, 1984, Pub. L. 98–407, title VIII, Sec. 809(a), 98 Stat. 1522; Pub. L. 99–561, Sec. 4, Oct. 27, 1986, 100 Stat. 3151; Pub. L. 107–296, title XVII, Sec. 1704(b)(4), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, Sec. 1056(c)(6), Jan. 6, 2006, 119 Stat. 3439.)

[§ 2666. Repealed. Pub. L. 108–375, div. B, title XXVIII, Sec. 2821(a)(2), Oct. 28, 2004, 118 Stat. 2129]

§ 2667. Leases: non-excess property of military departments

(a) LEASE AUTHORITY.—Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

- (1) under the control of that department; and
 - (2) not excess property, as defined by section 102 of title 40.
- (b) CONDITIONS ON LEASES.—A lease under subsection (a)—
- (1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;
 - (2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;
 - (3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;
 - (4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;
 - (5) may provide, notwithstanding section 1302 of title 40 or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease; and
 - (6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease.
- (c) TYPES OF IN-KIND CONSIDERATION.—(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:
- (A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.
 - (B) Construction of new facilities for the Secretary concerned.
 - (C) Provision of facilities for use by the Secretary concerned.
 - (D) Facilities operation support for the Secretary concerned.
 - (E) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.
- (2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(4) In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary concerned under this subsection is in-kind consideration with a value in excess of \$500,000, the Secretary concerned may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.

(d) COMMUNITY SUPPORT FACILITIES AND COMMUNITY SUPPORT SERVICES UNDER LEASE; WAIVER.—(1) In this subsection and subsection (b)(6), the term “covered entity” means each of the following:

- (A) The Army and Air Force Exchange Service.
- (B) The Navy Exchange Service Command.
- (C) The Marine Corps exchanges.
- (D) The Defense Commissary Agency.
- (E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary of a military department may waive the requirement in subsection (b)(6) with respect to a lease if—

- (A) the lease is entered into under subsection (g); or
- (B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary of the military department concerned shall provide to the congressional defense committees written notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary of the military department concerned regarding the opportunity to exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

(5) The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

(6) The Secretary of the military department concerned shall provide written notification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives regarding all leases under this section that include the operation of a community support facility or the provision of community support services, regardless of whether the facility will be operated by a covered entity or the lessee or the services will be provided by a covered entity or the lessee.

(e) DEPOSIT AND USE OF PROCEEDS.—(1)(A) The Secretary of a military department shall deposit in a special account in the Treasury established for such military department the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under sections 2668 and 2669 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that military department.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary of a military department pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (4), (5), or (6).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Facilities operation support.

(D) At least 50 percent of the proceeds deposited in the special account of a military department under subparagraph (A) shall be available for activities described in subparagraph (C) only at the military installation where the proceeds were derived.

(E) The Secretary concerned may not expend under subparagraph (C) an amount in excess of \$500,000 at a single installation until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

[(3) Repealed. Pub. L. 107-314, div. A, title X, Sec. 1041(a)(18), Dec. 2, 2002, 116 Stat. 2645.]

(4) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary of a military department (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(5) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law before January 1, 2005, shall be deposited into the account established under section

2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(6) Money rentals received by the United States from a lease under subsection (f) at a military installation approved for closure or realignment under a base closure law on or after January 1, 2005, shall be deposited into the account established under section 2906A(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(f) TREATMENT OF LESSEE INTEREST IN PROPERTY.—The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(g) SPECIAL RULES FOR BASE CLOSURE AND REALIGNMENT PROPERTY.—(1) Notwithstanding subsection (a)(2) or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(h) COMPETITIVE PROCEDURES FOR SELECTION OF CERTAIN LESSEES; EXCEPTION.—(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, and the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

(i) DEFINITIONS.—In this section:

(1) The term “community support facility” includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title).

(2) The term “community support services” includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(3) The term “military installation” has the meaning given such term in section 2687(e)(1) of this title.

(j) EXCLUSION OF CERTAIN LANDS.—This section does not apply to oil, mineral, or phosphate lands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 7, 1975, Pub. L. 94–107, title VI, Sec. 607(7), 89 Stat. 566; Sept. 14, 1976, Pub. L. 94–412, title V, Sec. 501(b), 90 Stat. 1258; Dec. 12, 1980, Pub. L. 96–513, title V, Sec. 511(92), 94 Stat. 2928; Oct. 12, 1982, Pub. L. 97–295, Sec. 1(34), 96 Stat. 1296; Oct. 15, 1982, Pub. L. 97–321, title VIII, Sec. 803, 96 Stat. 1572; Nov. 5, 1990, Pub. L. 101–510, div. B, title XXVIII, Sec. 2806, 104 Stat. 1787; Dec. 5, 1991, Pub. L. 102–190, div. B, title XXVIII, Sec. 2862, 105 Stat. 1559; Oct. 23, 1992, Pub. L. 102–484, div. B, title XXVIII, Sec. 2851,

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106 Stat. 2625; Nov. 30, 1993, Pub. L. 103–160, div. B, title XXIX, Sec. 2906, 107 Stat. 1920; Feb. 10, 1996, Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(1), div. B, title XXVIII, Secs. 2831(a), 2832, 2833, 110 Stat. 502, 558, 559; Pub. L. 105–85, div. A, title III, Sec. 361(b)(2), title X, Sec. 1061(a)–(c)(1), Nov. 18, 1997, 111 Stat. 1701, 1891; Oct. 17, 1998, Pub. L. 105–261, div. B, title XXVIII, Sec. 2821, 112 Stat. 2208; Pub. L. 106–65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Oct. 30, 2000, Pub. L. 106–398, Sec. 1[div. B, title XXVIII, Sec. 2812(a)–(e)], 114 Stat. 1654, 1654A–416 to 1654A–418; Dec. 28, 2001, Pub. L. 107–107, div. A, title X, Sec. 1013, 115 Stat. 1212; Pub. L. 107–217, Sec. 3(b)(12), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, Sec. 1041(a)(18), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–136, div. A, title X, Sec. 1043(b)(15), (c)(3), Nov. 24, 2003, 117 Stat. 1611, 1612; Pub. L. 108–178, Sec. 4(b)(4), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–364, div. A, title VI, Sec. 662, div. B, title XXVIII, Sec. 2831, Oct. 17, 2006, 120 Stat. 2263, 2480.)

§ 2667a. Leases: non-excess property of Defense agencies

(a) LEASE AUTHORITY.—Whenever the Secretary of Defense considers it advantageous to the United States, the Secretary may lease to such lessee and upon such terms as the Secretary considers will promote the national defense or to be in the public interest, personal property that is—

- (1) under the control of a Defense agency;
- (2) not for the time needed for public use; and
- (3) not excess property, as defined by section 102 of title

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(b) LIMITATION, TERMS, AND CONDITIONS.—A lease under subsection (a)—

(1) may not be for more than five years unless the Secretary of Defense determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless the Secretary determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary; and

(5) may provide, notwithstanding any other provision of law, for the improvement, maintenance, protection, repair, restoration, or replacement by the lessee, of the property leased as the payment of part or all of the consideration for the lease.

(c) COMPETITIVE SELECTION.—(1) If the term of a proposed lease under subsection (a) exceeds one year and the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary of Defense, the Secretary shall use competitive procedures to select the lessee.

(2) Before entering into a lease described in paragraph (1), the Secretary shall submit to Congress a written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee. The Secretary may then enter into the lease only after the end of the 30-day period beginning on the date on which the report is submitted or, if earlier, the end of the 14-day period

beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) **DISPOSITION OF MONEY RENT.**—Money rentals received pursuant to a lease entered into by the Secretary of Defense under subsection (a) shall be deposited in a special account in the Treasury established for the Defense agency whose property is subject to the lease. Amounts in a Defense agency's special account shall be available, to the extent provided in appropriations Acts, solely for the maintenance, repair, restoration, or replacement of the leased property.

(Added Pub. L. 105–85, div. A, title X, Sec. 1062(a), Nov. 18, 1997, 111 Stat. 1891; amended Pub. L. 107–217, Sec. 3(b)(13), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(28), Nov. 24, 2003, 117 Stat. 1599.)

§ 2668. Easements for rights-of-way

(a) **AUTHORIZED TYPES OF EASEMENTS.**—If the Secretary of a military department finds that it will not be against the public interest, the Secretary may grant, upon such terms as the Secretary considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under the Secretary's control for—

- (1) railroad tracks;
- (2) gas, water, sewer, and oil pipe lines;
- (3) substations for electric power transmission lines and pumping stations for gas, water, sewer, and oil pipe lines;
- (4) canals;
- (5) ditches;
- (6) flumes;
- (7) tunnels;
- (8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;
- (9) roads and streets;
- (10) poles and lines for the transmission or distribution of electric power;
- (11) poles and lines for the transmission or distribution of communications signals (including telephone and telegraph signals);
- (12) structures and facilities for the transmission, reception, and relay of such signals; and
- (13) any other purpose that the Secretary considers advisable.

(b) **LIMITATION ON SIZE OF EASEMENT.**—No easement granted under this section may include more land than is necessary for the easement.

(c) **TERMINATION.**—The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

- (1) failure to comply with the terms of the grant;
- (2) nonuse for a two-year period; or
- (3) abandonment.

(d) **NOTICE TO DEPARTMENT OF THE INTERIOR.**—Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(e) DISPOSITION OF CONSIDERATION.—Subsections (c) and (d) of section 2667 of this title shall apply with respect to in-kind consideration and proceeds received by the Secretary of a military department in connection with an easement granted under this section in the same manner as such subsections apply to in-kind consideration and money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 19, 1984, Pub. L. 98-525, title XIV, Sec. 1405(38), 98 Stat. 2624; Sept. 23, 1996, Pub. L. 104-201, div. B, title XXVIII, Sec. 2861, 110 Stat. 2804; Oct. 30, 2000, Pub. L. 106-398, Sec. 1 [div. B, title XXVIII, Sec. 2812(f)(1)], 114 Stat. 1654, 1654A-418; Pub. L. 108-136, div. B, title XXVIII, Sec. 2813(a), Nov. 24, 2003, 117 Stat. 1725; Pub. L. 109-163, div. A, title X, Sec. 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109-364, div. B, title XXVIII, Sec. 2822(a), (b), Oct. 17, 2006, 120 Stat. 2474.)

§ 2668a. Easements: granting restrictive easements in connection with land conveyances

(a) AUTHORITY TO INCLUDE RESTRICTIVE EASEMENT.—In connection with the conveyance of real property by the Secretary concerned under any provision of law, the Secretary concerned may grant an easement to an entity specified in subsection (b) restricting future uses of the conveyed real property for a conservation purpose consistent with section 170(h)(4)(A)(iv) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(4)(A)(iv)).

(b) AUTHORIZED RECIPIENTS.—An easement under subsection (a) may be granted only to—

- (1) a State or local government; or
- (2) a qualified organization, as that term is defined in section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)).

(c) LIMITATIONS ON USE OF EASEMENT AUTHORITY.—An easement under subsection (a) may not be granted unless—

- (1) the proposed recipient of the easement consents to the receipt of the easement;
- (2) the Secretary concerned determines that the easement is in the public interest and the conservation purpose to be promoted by the easement cannot be effectively achieved through the application of State law by the State or a local government without the grant of restrictive easements;
- (3) the jurisdiction that encompasses the property to be subject to the easement authorizes the grant of restrictive easements; and
- (4) the Secretary can give or assign to a third party the responsibility for monitoring and enforcing easements granted under this section.

(d) CONSIDERATION.—Easements granted under this section shall be without consideration from the recipient.

(e) ACREAGE LIMITATION.—No easement granted under this section may include more land than is necessary for the easement.

(f) TERMS AND CONDITIONS.—The grant of an easement under this section shall be subject to such additional terms and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(Added Pub. L. 109-364, div. B, title XXVIII, Sec. 2823(a), Oct. 17, 2006, 120 Stat. 2475.)

[§ 2669. Repealed. Pub. L. 109–364, div. B, title XXVIII, Sec. 2822(c), Oct. 17, 2006, 120 Stat. 2475]

§ 2670. Use of facilities by private organizations; use as polling places

(a) **USE BY RED CROSS.**—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or

(2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this subsection are available to aid the civilian population in a serious national disaster.

(b) **USE OF CERTAIN FACILITIES AS POLLING PLACES.**—(1) Notwithstanding chapter 29 of title 18 (including sections 592 and 593 of such title) or any other provision of law, the Secretary of Defense or Secretary of a military department may not (except as provided in paragraph (3)) prohibit the designation or use of a qualifying facility under the jurisdiction of the Secretary as an official polling place for local, State, or Federal elections.

(2) A Department of Defense facility is a qualifying facility for purposes of this subsection if as of December 31, 2000—

(A) the facility is designated as an official polling place by a State or local election official; or

(B) the facility has been used as such an official polling place since January 1, 1996.

(3) The limitation in paragraph (1) may be waived by the Secretary of Defense or Secretary of the military department concerned with respect to a particular Department of Defense facility if the Secretary of Defense or Secretary concerned determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election.

(c) **USE OF SPACE AND EQUIPMENT BY VETERANS SERVICE ORGANIZATIONS.**—(1) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of the Secretary concerned that are on land and from which persons are discharged or released from active duty.

(2) The commanding officer of a military installation allowing representatives to function on the installation under paragraph (1) shall allow the representatives to use available space and equipment at the installation.

(3) This subsection does not authorize the violation of measures of military security.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151; Dec. 28, 2001, Pub. L. 107–107, div. A, title XVI, Sec. 1607(a), (b)(1), (2), 115 Stat. 1279, 1280; Pub. L. 108–375, div. B, title XXVIII, Sec. 2821(c)(1), (e)(2), Oct. 28, 2004, 118 Stat. 2129, 2130.)

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) GENERAL REQUIREMENTS FOR HUNTING, FISHING, AND TRAPPING.—The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive or otherwise modify the fish and game laws of a State otherwise applicable under subsection (a)(1) to hunting, fishing, or trapping at a military installation or facility if the Secretary determines that the application of such laws to such hunting, fishing, or trapping without modification could result in undesirable consequences for public health or safety at the installation or facility. The authority to waive such laws includes the authority to extend, but not reduce, the specified season for certain hunting, fishing, or trapping. The Secretary may not waive the requirements under subsection (a)(2) regarding a license for such hunting, fishing, or trapping or any fee imposed by a State to obtain such a license.

(2) If the Secretary determines that a waiver of fish and game laws of a State is appropriate under paragraph (1), the Secretary shall provide written notification to the appropriate State officials stating the reasons for, and extent of, the waiver. The notification shall be provided at least 30 days before implementation of the waiver.

(c) VIOLATIONS.—Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) RELATION TO TREATY RIGHTS.—This section does not modify any rights granted by the treaty or otherwise to any Indian tribe or to the members thereof.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 85–337, Sec. 4(1), Feb. 28, 1958, 72 Stat. 29; amended Pub. L. 107–107, div. B, title XXVIII, Sec. 2811, Dec. 28, 2001, 115 Stat. 1307; Pub. L. 109–163, div. A, title X, Sec. 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

[§ 2672. Repealed. Pub. L. 109–163, div. B, title XXVIII, Sec. 2821(f), Jan. 6, 2006, 119 Stat. 3513]

[§ 2672a. Repealed. Pub. L. 109–163, div. B, title XXVIII, Sec. 2821(f), Jan. 6, 2006, 119 Stat. 3513]

[§ 2673. Repealed. Pub. L. 108–375, div. B, title XXVIII, Sec. 2821(d)(2), Oct. 28, 2004, 118 Stat. 2130]

§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region

(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

(2) Before March 1 of each year, the Secretary of Defense shall transmit to the congressional committees specified in paragraph (3) a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

(3) The committees referred to in paragraph (2) are—

(A) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate; and

(B) the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives.

(b)(1) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals—

(A) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

(B) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials.

(2) For positions for which the permanent duty station is the Pentagon Reservation, the Secretary, in his sole and exclusive discretion, may without regard to the pay provisions of title 5, fix the rates of basic pay for such positions occupied by civilian law enforcement and security personnel appointed under the authority

of this section so as to place such personnel on a comparable basis with personnel of other similar Federal law enforcement and security organizations within the vicinity of the Pentagon Reservation, not to exceed the basic pay for personnel performing similar duties in the United States Secret Service Uniformed Division or the United States Park Police.

(c)(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than \$1,000.

(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdemeanor.

(d) The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e)(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the "Fund"). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d).

(2) Monies deposited into the Fund shall be available, without fiscal year limitation, for expenditure for real property management, operation, protection, construction, repair, alteration and related activities for the Pentagon Reservation.

(f) In this section:

(1) The term "Pentagon Reservation" means that area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

(2) The term "National Capital Region" means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(g) For purposes of subsections (b), (c), (d), and (e), the terms "Pentagon Reservation" and "National Capital Region" shall be treated as including the land and physical facilities at the Raven Rock Mountain Complex.

(Added Pub. L. 101-510, div. B, title XXVIII, Sec. 2804(a)(1), Nov. 5, 1990, 104 Stat. 1784; amended Pub. L. 102-190, div. A, title X, Sec. 1061(a)(18), div. B, title XXVIII,

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Sec. 2864, Dec. 5, 1991, 105 Stat. 1473, 1561; Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(24), Feb. 10, 1996, 110 Stat. 505; Pub. L. 104–201, div. A, title III, Sec. 369(a), (b)(1), Sept. 23, 1996, 110 Stat. 2498; Pub. L. 106–65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title XI, Sec. 1101, Dec. 28, 2001, 115 Stat. 1234; Pub. L. 108–136, div. A, title IX, Sec. 933, Nov. 24, 2003, 117 Stat. 1581.)

§ 2675. Leases: foreign countries

(a) **LEASE AUTHORITY; DURATION.**—The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to 10 years, or 15 years in the case of a lease in Korea, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

(b) **AVAILABILITY OF FUNDS.**—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 85–861, Sec. 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 91–511, title VI, Sec. 608, Oct. 26, 1970, 84 Stat. 1224; Pub. L. 94–107, title VI, Sec. 607(10), (11), Oct. 7, 1975, 89 Stat. 567; Pub. L. 95–82, title V, Sec. 505(a), Aug. 1, 1977, 91 Stat. 371; Pub. L. 95–356, title V, Sec. 503(b), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, Sec. 502(b), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, Sec. 504(b), Oct. 10, 1980, 94 Stat. 1765; Pub. L. 97–99, title VI, Sec. 604, Dec. 23, 1981, 95 Stat. 1374; Pub. L. 97–214, Sec. 8, July 12, 1982, 96 Stat. 174; Pub. L. 98–525, title XIV, Sec. 1405(40), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, Sec. 1322(a)(11), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 108–136, div. B, title XXVIII, Sec. 2804(b), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 108–375, div. B, title XXVIII, Sec. 2821(d)(3), Oct. 28, 2004, 118 Stat. 2130; Pub. L. 109–364, div. B, title XXVIII, Sec. 2824, Oct. 17, 2006, 120 Stat. 2476.)

[§ 2676. Renumbered 2664]

§ 2677. Options: property required for military construction projects

(a) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(Added Pub. L. 85–861, Sec. 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 87–554, title VI, Sec. 607, July 27, 1962, 76 Stat. 242; Pub. L. 92–145, title VII, Sec. 707(4), Oct. 27, 1971, 85 Stat. 412; Pub. L. 94–273, Sec. 6(3), Apr. 21, 1976, 90 Stat. 377; Pub. L. 97–214, Sec. 10(a)(5)(A), (B), July 12, 1982, 96 Stat. 175; Pub. L. 97–375, title I, Sec. 104(b), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–407, title VIII, Sec. 803, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 102–190, div. B, title XXVIII, Sec. 2861, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 103–35, title II, Sec. 201(c)(9), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title X, Sec. 1062(a)(12), Dec. 2, 2002, 116 Stat. 2650.)

§ 2678. Feral horses and burros: removal from military installations

When feral horses or burros are found on an installation under the jurisdiction of the Secretary of a military department, the Sec-

retary may use helicopters and motorized equipment for their removal.

(Added Pub. L. 101–510, div. A, title XIV, Sec. 1481(h)(1), Nov. 5, 1990, 104 Stat. 1708.)

[§ 2679. Repealed. Pub. L. 108–375, div. B, title XXVIII, Sec. 2821(c)(2), Oct. 28, 2004, 118 Stat. 2129]

§ 2680. Leases: land for special operations activities

(a) **AUTHORITY TO ACQUIRE LEASEHOLDS.**—The Secretary of Defense may acquire a leasehold interest in real property if the Secretary determines that the acquisition of such interest is necessary in the interests of national security to facilitate special operations activities of forces of the special operations command established pursuant to section 167 of this title.

(b) **LIMITATIONS ON AUTHORITY.**—(1) The Secretary may not acquire a leasehold interest in any real property under subsection (a) if the estimated annual rental cost of that real property exceeds \$500,000.

(2) The Secretary may not acquire more than five leasehold interests in real property under subsection (a) during a fiscal year.

(3) The term of a leasehold interest acquired under this section shall not exceed one year.

(c) **CONSTRUCTION OR MODIFICATION OF FACILITY ON LEASEHOLD.**—The Secretary may provide in a lease entered into under this section for the construction or modification of any facility on the leased property in order to facilitate the activities referred to in subsection (a). The total cost of the construction or modification of such facility may not exceed \$750,000 in any fiscal year.

(d) **EXPIRATION OF AUTHORITY.**—The authority of the Secretary of Defense to acquire a leasehold interest in real property under this section shall expire on September 30, 2005. The expiration of that authority shall not affect the validity of any contract entered into under this section on or before that date.

(Added Pub. L. 102–190, div. B, title XXVIII, Sec. 2863(a)(1), Dec. 5, 1991, 105 Stat. 1560; amended Pub. L. 103–160, div. B, title XXVIII, Sec. 2807(a), Nov. 30, 1993, 107 Stat. 1887; Pub. L. 104–106, div. B, title XXVIII, Sec. 2820(a), (b), Feb. 10, 1996, 110 Stat. 556; Pub. L. 106–65, div. A, title X, Sec. 1067(1), div. B, title XXVIII, Sec. 2811, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 107–314, div. A, title X, Sec. 1062(a)(13), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(31), Nov. 24, 2003, 117 Stat. 1600.)

§ 2681. Use of test and evaluation installations by commercial entities

(a) **CONTRACT AUTHORITY.**—The Secretary of Defense may enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) **TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.**—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense cer-

tifies in writing that the test or evaluation activity is or would be detrimental—

- (1) to the public health and safety;
- (2) to property (either public or private); or
- (3) to any national security interest or foreign policy interest of the United States.

(c) **CONTRACT PRICE.**—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) **RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.**—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) **REGULATIONS AND LIMITATIONS.**—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) **DEFINITIONS.**—In this section:

(1) The term “Major Range and Test Facility Installation” means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term “direct costs” includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, Sec. 846(a), Nov. 30, 1993, 107 Stat. 1722; amended Pub. L. 105–85, div. A, title VIII, Sec. 842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105–261, div. A, title VIII, Sec. 820, Oct. 17, 1998, 112 Stat. 2090.)

§ 2682. Facilities for defense agencies

The maintenance and repair of a real property facility for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be

under the jurisdiction of a military department designated by the Secretary of Defense.

(Added Pub. L. 88-174, title VI, Sec. 609(a)(1), Nov. 7, 1963, 77 Stat. 329; amended Pub. L. 97-214, Sec. 10(a)(7), July 12, 1982, 96 Stat. 175.)

§ 2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations

(a) Notwithstanding any other provision of law, the Secretary concerned may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

(b) The authority granted by subsection (a) is in addition to and not instead of that granted by any other provision of law.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned shall establish and enforce as the minimum drinking age on a military installation located in a State the age established by the law of that State as the State minimum drinking age.

(2)(A) In the case of a military installation located—

(i) in more than one State; or

(ii) in one State but within 50 miles of another State or Mexico or Canada,

the Secretary concerned may establish and enforce as the minimum drinking age on that military installation the lowest applicable age.

(B) In subparagraph (A), the term “lowest applicable age” means the lowest minimum drinking age established by the law—

(i) of a State in which a military installation is located; or

(ii) of a State or jurisdiction of Mexico or Canada that is within 50 miles of such military installation.

(3)(A) The commanding officer of a military installation may waive the requirement of paragraph (1) if such commanding officer determines that the exemption is justified by special circumstances.

(B) The Secretary of Defense shall define by regulations what constitute special circumstances for the purposes of this paragraph.

(4) In this subsection:

(A) The term “State” includes the District of Columbia.

(B) The term “minimum drinking age” means the minimum age or ages established for persons who may purchase, possess, or consume alcoholic beverages.

(Added Pub. L. 91-511, title VI, Sec. 613(1), Oct. 26, 1970, 84 Stat. 1226; amended Pub. L. 92-545, title VIII, Sec. 707, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93-283, Sec. 3, May 14, 1974, 88 Stat. 141; Pub. L. 99-145, title XII, Sec. 1224(a), (b)(1), (c)(1), Nov. 8, 1985, 99 Stat. 728, 729; Pub. L. 99-661, div. A, title XIII, Sec. 1343(a)(18), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100-526, title I, Sec. 106(b)(2), Oct. 24, 1988, 102 Stat. 2625.)

§ 2684. Cooperative agreements for management of cultural resources

(a) **AUTHORITY.**—The Secretary of Defense or the Secretary of a military department may enter into a cooperative agreement with a State or local government or other entity for the preservation, management, maintenance, and improvement of cultural resources on military installations and for the conduct of research regarding the cultural resources. Activities under the cooperative agreement shall be subject to the availability of funds to carry out the cooperative agreement.

(b) **APPLICATION OF OTHER LAWS.**—Section 1535 and chapter 63 of title 31 shall not apply to a cooperative agreement entered into under this section.

(c) **CULTURAL RESOURCE DEFINED.**—In this section, the term “cultural resource” means any of the following:

(1) A building, structure, site, district, or object eligible for or included in the National Register of Historic Places maintained under section 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a)).

(2) Cultural items, as that term is defined in section 2(3) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(3)).

(3) An archaeological resource, as that term is defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)).

(4) An archaeological artifact collection and associated records covered by section 79 of title 36, Code of Federal Regulations.

(Added Pub. L. 104–201, div. B, title XXVIII, Sec. 2862(a), Sept. 23, 1996, 110 Stat. 2804; amended Pub. L. 105–85, div. A, title X, Sec. 1073(a)(58), Nov. 18, 1997, 111 Stat. 1903.)

§ 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) **AGREEMENTS AUTHORIZED.**—The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity or entities described in subsection (b) to address the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace for purposes of—

(1) limiting any development or use of the property that would be incompatible with the mission of the installation; or

(2) preserving habitat on the property in a manner that—

(A) is compatible with environmental requirements;

and

(B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation.

(b) **ELIGIBLE ENTITIES.**—An agreement under this section may be entered into with any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Chapter 63 of title 31 shall not apply to any agreement entered into under this section.

(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) An agreement with an eligible entity or entities under this section shall provide for—

(A) the acquisition by the entity or entities of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and the entity or entities of the acquisition costs in accordance with paragraph (3).

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3)(A) The Secretary concerned shall determine the appropriate portion of the acquisition costs to be borne by the United States in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B).

(B) In lieu of or in addition to making a monetary contribution toward the cost of acquiring a parcel of real property, or an interest therein, pursuant to an agreement under this section, the Secretary concerned may convey, using the authority provided by section 2869 of this title, real property described in paragraph (2) of subsection (a) of such section, subject to the limitation in paragraph (3) of such subsection.

(C) The portion of acquisition costs borne by the United States under subparagraph (A), either through the contribution of funds or excess real property, or both, may not exceed an amount equal to the fair market value of any property or interest to be transferred to the United States upon the request of the Secretary concerned under paragraph (4).

(D) The contribution of an entity or entities to the acquisition costs of real property, or an interest in real property, under paragraph (1)(B) may include, with the approval of the Secretary concerned, the following or any combination of the following:

(i) The provision of funds, including funds received by such entity or entities from a Federal agency outside the Department of Defense or a State or local government in connection with a Federal, State, or local program.

(ii) The provision of in-kind services, including services related to the acquisition or maintenance of such real property or interest in real property.

(iii) The exchange or donation of real property or any interest in real property.

(4) The agreement shall require the entity or entities to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. The Secretary shall

limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(5) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(6) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) ACQUISITION OF WATER RIGHTS.—The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) ANNUAL REPORTS.—(1) Not later than March 1, 2007, and annually thereafter, the Secretary of Defense shall, in coordination with the Secretaries of the military departments and the Director of the Department of Defense Test Resource Management Center, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the projects undertaken under agreements under this section.

(2) Each report under paragraph (1) shall include the following the following:

(A) A description of the status of the projects undertaken under agreements under this section.

(B) An assessment of the effectiveness of such projects, and other actions taken pursuant to this section, as part of a long-term strategy to ensure the sustainability of military test and training ranges, military installations, and associated airspace.

(C) An evaluation of the methodology and criteria used to select, and to establish priorities, for projects undertaken under agreements under this section.

(D) A description of any sharing of costs by the United States and eligible entities under subsection (d) during the preceding year, including a description of each agreement under this section providing for the sharing of such costs and a statement of the eligible entity or entities with which the United States is sharing such costs.

(E) Such recommendations as the Secretary of Defense considers appropriate for legislative or administrative action in order to improve the efficiency and effectiveness of actions taken pursuant to agreements under this section.

(h) FUNDING.—(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the

Army, Navy, Marine Corps, Air Force, or Defense-wide activities may be used to enter into agreements under this section.

(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(i) DEFINITIONS.—In this section:

(1) The term “Secretary concerned” means the Secretary of Defense or the Secretary of a military department.

(2) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(Added Pub. L. 107–314, div. B, title XXVIII, Sec. 2811(a), Dec. 2, 2002, 116 Stat. 2705; amended Pub. L. 109–163, div. B, title XXVIII, Sec. 2822, Jan. 6, 2006, 119 Stat. 3513; Pub. L. 109–364, div. B, title XXVIII, Sec. 2811(g), Oct. 17, 2006, 120 Stat. 2473.)

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) ADJUSTMENT OR SURCHARGE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) USE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only—

(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term “physical infrastructure” includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(c) ADVANCE OBLIGATION.—The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d) COOPERATION WITH NONAPPROPRIATED FUND INSTRUMENTALITIES.—(1) The Secretary of Defense may authorize a non-appropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(e) OTHER SOURCES OF FUNDS FOR CONSTRUCTION AND IMPROVEMENTS.—Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):

- (1) Sale of recyclable materials.
- (2) Sale of excess and surplus property.
- (3) License fees.
- (4) Royalties.
- (5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 93-552, title VI, Sec. 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95-82, title VI, Sec. 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97-321, title VIII, Sec. 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103-337, div. B, title XXVIII, Sec. 2851, Oct. 5, 1994, 108 Stat. 3072; Pub. L. 105-85, div. A, title III, Sec. 374, Nov. 18, 1997, 111 Stat. 1707; Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-60.)

§ 2686. Utilities and services: sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.
- (8) Mechanical refrigeration.
- (9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, Sec. 2481; Pub. L. 86-156, Aug. 14, 1959, 73 Stat. 338; renumbered Sec. 2686, Pub. L. 105-85, div. A, title III, Sec. 371(b)(1), Nov. 18, 1997, 111 Stat. 1705.)

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies, unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d)(1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to

the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title.

(e) In this section:

(1) The term “military installation” means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) The term “civilian personnel” means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term “realignment” includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(4) The term “legislative day” means a day on which either House of Congress is in session.

(Added Pub. L. 95–82, title VI, Sec. 612(a), Aug. 1, 1977, 91 Stat. 379; amended Pub. L. 95–356, title VIII, Sec. 805, Sept. 8, 1978, 92 Stat. 586; Pub. L. 97–214, Sec. 10(a)(8), July 12, 1982, 96 Stat. 175; Pub. L. 98–525, title XIV, Sec. 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–145, title XII, Sec. 1202(a), Nov. 8, 1985, 99 Stat. 716; Pub. L. 100–180, div. A, title XII, Sec. 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. B, title XXIX, Sec. 2911, Nov. 5, 1990, 104 Stat. 1819; Pub. L. 104–106, div. A, title XV, Sec. 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

§ 2688. Utility systems: conveyance authority

(a) CONVEYANCE AUTHORITY.—(1) The Secretary of a military department may convey a utility system, or part of a utility system, under the jurisdiction of the Secretary to a municipal, private, regional, district, or cooperative utility company or other entity. The conveyance may consist of all right, title, and interest of the United States in the utility system or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(2) The Secretary concerned may not enter into a contract to convey a utility system, or part of a utility system, under this subsection until—

(A) the Secretary submits to the congressional defense committees an economic analysis, based upon accepted life-cycle costing procedures approved by the Secretary of Defense, that demonstrates that—

(i) the long-term economic benefit to the United States of the conveyance of the utility system, or part thereof, exceeds the long-term economic cost to the United States of the conveyance;

(ii) the conveyance of the utility system, or part thereof, will reduce the long-term cost to the United States of utility services provided by the utility system; and

(iii) the economic benefit analysis under clause (i) and the cost reduction analysis under clause (ii) incorporate margins of error in the estimates, based upon guidance approved by the Secretary of Defense that minimize any underestimation of the costs resulting from privatization of the utility system, or part thereof, or any overestimation of the costs resulting from continued Government ownership and management of the utility system, or part thereof; and

(B) the end of the 21-day period beginning on the date on which the economic analysis prepared under subparagraph (A) with respect to the conveyance of the utility system, or part thereof, is received by the congressional defense committees or, if over earlier, the end of the 14-day period beginning on the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.

(b) SELECTION OF CONVEYEE.—(1) If more than one utility or entity referred to in subsection (a) notifies the Secretary concerned of an interest in a conveyance under such subsection, the Secretary shall carry out the conveyance through the use of competitive procedures.

(2) Notwithstanding paragraph (1), the Secretary concerned may use procedures other than competitive procedures, but only in accordance with subsections (c) through (f) of section 2304 of this title, to select the conveyee of a utility system (or part of a utility system) under subsection (a).

(3) With respect to the solicitation process used in connection with the conveyance of a utility system (or part of a utility system) under subsection (a), the Secretary concerned shall ensure that the process is conducted in a manner consistent with the laws and regulations of the State in which the utility system is located to the extent necessary to ensure that all interested regulated and unregulated utility companies and other interested entities receive an opportunity to acquire and operate the utility system to be conveyed.

(c) CONSIDERATION.—(1) The Secretary concerned may require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of—

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

(d) CONTRACTS FOR UTILITY SERVICES.—(1) Except as provided in paragraph (2), a contract for the receipt of utility services as consideration under subsection (c), or any other contract for utility services entered into by the Secretary concerned in connection with the conveyance of a utility system under this section, may be for a period not to exceed 10 years.

(2) The Secretary of Defense, or the designee of the Secretary, may authorize a contract for utility services described in paragraph (1) to have a term in excess of 10 years, but not to exceed 50 years, if the Secretary determines that a contract for a longer term will be cost effective. The economic analysis submitted to the congressional defense committees under subsection (a)(2) for the conveyance of the utility system, or part thereof, with regard to which the utility services contract will be entered into by the Secretary concerned shall include the determination required by this paragraph, an explanation of the need for the longer term contract, and a comparison of costs between a 10-year contract and the longer-term contract.

(e) TREATMENT OF PAYMENTS.—(1) A lump sum payment received under subsection (c) shall be credited, at the election of the Secretary concerned—

(A) to an appropriation of the military department concerned available for the procurement of the same utility services as are provided by the utility system conveyed under this section;

(B) to an appropriation of the military department available for carrying out energy savings projects or water conservation projects; or

(C) to an appropriation of the military department available for improvements to other utility systems.

(2) Amounts so credited shall be merged with funds in the appropriation to which credited and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriation with which merged.

(f) QUARTERLY REPORT.—Not later than 30 days after the end of each quarter of a fiscal year, the Secretary shall submit to the congressional defense committees a report on the conveyances made under subsection (a) during such fiscal quarter.

(g) ADDITIONAL TERMS AND CONDITIONS.—(1) The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(2) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with applicable Federal and State regulations pertaining to health, safety, fire, and environmental requirements.

(h) ASSISTANCE FOR CONSTRUCTION, REPAIR, OR REPLACEMENT OF UTILITY SYSTEMS.—In lieu of carrying out a military construction project to construct, repair, or replace a utility system, the Secretary concerned may use funds authorized and appropriated for the project to facilitate the conveyance of the utility system under this section by making a contribution toward the cost of construction, repair, or replacement of the utility system by the entity to which the utility system is being conveyed. The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (a)(2).

(i) UTILITY SYSTEM DEFINED.—(1) In this section, the term “utility system” means any of the following:

(A) A system for the generation and supply of electric power.

(B) A system for the treatment or supply of water.

(C) A system for the collection or treatment of wastewater.

(D) A system for the generation or supply of steam, hot water, and chilled water.

(E) A system for the supply of natural gas.

(F) A system for the transmission of telecommunications.

(2) The term “utility system” includes the following:

(A) Equipment, fixtures, structures, and other improvements utilized in connection with a system referred to in paragraph (1).

(B) Real property, easements, and rights-of-way associated with a system referred to in that paragraph.

(j) LIMITATION.—This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.

(Added Pub. L. 104–85, div. B, title XXVIII, Sec. 2812(a), Nov. 18, 1997, 111 Stat. 1992; Pub. L. 106–65, div. A, title X, Sec. 1067(1), div. B, title XXVIII, Sec. 2812, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 106–398, Sec. 1 [[div. A], title X, Sec. 1087(a)(15), div. B, title XXVIII, Sec. 2813], Oct. 30, 2000, 114 Stat. 1654, 1654A–291, 1654A–418; Pub. L. 108–136, div. A, title X, Sec. 1031(a)(32), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109–163, div. B, title XXVIII, Sec. 2823(a)–(d), Jan. 6, 2006, 119 Stat. 3514–3516.)

§ 2689. Renumbered 2917

§ 2690. Renumbered 2918

§ 2691. Restoration of land used by permit or lease

(a) The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit or lease from another military department or Federal agency if the restoration is required by the permit or lease making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) Unless otherwise prohibited by law or the terms of the permit or lease, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(c)(1) As a condition of any lease, permit, license, or other grant of access entered into by the Secretary of a military department with another Federal agency authorizing the agency to use lands under the control of the Secretary, the Secretary may require the agency to agree to remove any improvements and to take any other action necessary in the judgment of the Secretary to restore

the land used by the agency to its condition before its use by the agency.

(2) In lieu of performing any removal or restoration work under paragraph (1), a Federal agency may elect, with the consent of the Secretary, to reimburse the Secretary for the costs incurred by the military department in performing such removal or restoration work.

(Added Pub. L. 98-407, title VIII, Sec. 804(a), Aug. 28, 1984, 98 Stat. 1519; amended Pub. L. 99-145, title XIII, Sec. 1303(a)(17), Nov. 8, 1985, 99 Stat. 739; Pub. L. 105-261, div. B, title XXVIII, Sec. 2812(a), (b)(1), Oct. 17, 1998, 112 Stat. 2205; Pub. L. 107-217, Sec. 3(b)(15), Aug. 21, 2002, 116 Stat. 1296.)

§ 2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials

(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage, treatment, or disposal of any material that is a toxic or hazardous material and that is not owned either by the Department of Defense or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation.

(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section, including specification of the quantity of a material that serves to make it hazardous or toxic for the purposes of this section. The definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

(b) Subsection (a) does not apply to the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of the Department of Defense or in connection with a service to be performed on an installation of the Department for the benefit of the Department.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the con-

tractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or non-nuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of the Department of Defense, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(A) is consistent with the best interest of national defense and environmental security; and

(B) provides for the prospective user's continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on an installation of the Department of Defense or on other land controlled by the United States.

(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.

(Added Pub. L. 98-407, title VIII, Sec. 805(a), Aug. 28, 1984, 98 Stat. 1520; amended Pub. L. 102-484, div. B, title XXVIII, Sec. 2852, Oct. 23, 1992, 106 Stat.

2625; Pub. L. 103–337, div. A, title III, Sec. 325, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 105–85, div. A, title III, Sec. 343(a)–(g)(2), Nov. 18, 1997, 111 Stat. 1686, 1687; Pub. L. 106–65, div. A, title X, Sec. 1066(a)(25), Oct. 5, 1999, 113 Stat. 772; Pub. L. 109–364, div. A, title X, Sec. 1071(a)(21), Oct. 17, 2006, 120 Stat. 2399.)

[§ 2693. Repealed. Pub. L. 109–364, div. B, title XXVIII, Sec. 2825(c)(2), Oct. 17, 2006, 120 Stat. 2477]

§ 2694. Conservation and cultural activities

(a) **ESTABLISHMENT.**—The Secretary of Defense may establish and carry out a program to conduct and manage in a coordinated manner the conservation and cultural activities described in subsection (b).

(b) **ACTIVITIES.**—(1) A conservation or cultural activity eligible for the program that the Secretary establishes under subsection (a) is any activity—

(A) that has regional or Department of Defense-wide significance and that involves more than one military department;

(B) that is necessary to meet legal requirements or to support military operations;

(C) that can be more effectively managed at the Department of Defense level; and

(D) for which no executive agency has been designated responsible by the Secretary.

(2) Such activities include the following:

(A) The development of ecosystem-wide land management plans.

(B) The conduct of wildlife studies to ensure the safety of military operations.

(C) The identification and return of Native American human remains and cultural items in the possession or control of the Department of Defense, or discovered on land under the jurisdiction of the Department, to the appropriate Native American tribes.

(D) The control of invasive species that may hinder military activities or degrade military training ranges.

(E) The establishment of a regional curation system for artifacts found on military installations.

(c) **COOPERATIVE AGREEMENTS.**—The Secretary may negotiate and enter into cooperative agreements with public and private agencies, organizations, institutions, individuals, or other entities to carry out the program established under subsection (a).

(d) **EFFECT ON OTHER LAWS.**—Nothing in this section shall be construed or interpreted as preempting any otherwise applicable Federal, State, or local law or regulation relating to the management of natural and cultural resources on military installations.

(Added Pub. L. 104–201, div. A, title III, Sec. 332(a)(1), Sept. 23, 1996, 110 Stat. 2484; amended Pub. L. 105–85, div. A, title X, Sec. 1073(a)(59), Nov. 18, 1997, 111 Stat. 1903.)

§ 2694a. Conveyance of surplus real property for natural resource conservation

(a) **AUTHORITY TO CONVEY.**—The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that—

- (1) is under the administrative control of the Secretary;
- (2) is suitable and desirable for conservation purposes;
- (3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and
- (4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40.

(b) **ELIGIBLE ENTITIES.**—The conveyance of surplus real property under this section may be made to any of the following:

- (1) A State or political subdivision of a State.
- (2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

(c) **REVERSIONARY INTEREST AND OTHER DEED REQUIREMENTS.**—(1) The deed of conveyance of any surplus real property conveyed under this section shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary concerned determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

(2) The deed of conveyance may permit the recipient of the property—

(A) to convey the property to another eligible entity, subject to the approval of the Secretary concerned and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(d) **RELEASE OF COVENANTS.**—With the concurrence of the Secretary of Interior, the Secretary concerned may grant a release from a covenant included in the deed of conveyance of real property conveyed under this section, subject to the condition that the recipient of the property pay the fair market value, as determined by the Secretary concerned, of the property at the time of the release of the covenant. The Secretary concerned may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

(e) **CONGRESSIONAL NOTIFICATION.**—The Secretary concerned may not approve of the reconveyance of real property under sub-

section (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the appropriate committees of Congress of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees.

(f) LIMITATIONS.—The conveyance of real property under this section shall not be used as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary concerned may make the conveyance, with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

(g) CONSIDERATION.—In fixing the consideration for the conveyance of real property under this section, or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

(h) RELATION TO OTHER CONVEYANCE AUTHORITIES.—(1) The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

(2) In the case of real property on Guam, the Secretary concerned may not make a conveyance under this section unless the Government of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106–504 (114 Stat. 2309).

(i) DEFINITIONS.—In this section:

(1) The term “appropriate committees of Congress” has the meaning given such term in section 2801 of this title.

(2) The term “Secretary concerned” means the Secretary of a military department.

(3) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 107–314, div. B, title XXVIII, Sec. 2812(a)(1), Dec. 2, 2002, 116 Stat. 2707; amended Pub. L. 109–163, div. A, title X, Sec. 1056(a)(1), (b), Jan. 6, 2006, 119 Stat. 3438, 3439; Pub. L. 109–364, div. A, title X, Sec. 1071(a)(22), Oct. 17, 2006, 120 Stat. 2399.)

§ 2694b. Participation in wetland mitigation banks

(a) AUTHORITY TO PARTICIPATE.—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or “in-lieu-fee” mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee

Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance or regulation.

(b) **ALTERNATIVE TO CREATION OF WETLAND.**—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.

(c) **TREATMENT OF PAYMENTS.**—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction.

(Added Pub. L. 108–136, div. A, title III, Sec. 314(a), Nov. 24, 2003, 117 Stat. 1430.)

§ 2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions

(a) **AUTHORITY TO ACCEPT.**—In connection with a real property transaction referred to in subsection (b) with a non-Federal person or entity, the Secretary of a military department may accept amounts provided by the person or entity to cover administrative expenses incurred by the Secretary in entering into the transaction.

(b) **COVERED TRANSACTIONS.**—Subsection (a) applies to the following transactions involving real property under the control of the Secretary of a military department:

- (1) The exchange of real property.
- (2) The grant of an easement over, in, or upon real property of the United States.
- (3) The lease or license of real property of the United States.
- (4) The disposal of real property of the United States for which the Secretary will be the disposal agent.
- (5) The conveyance of real property under section 2694a of this title.

(c) **USE OF AMOUNTS COLLECTED.**—Amounts collected under subsection (a) for administrative expenses shall be credited to the appropriation, fund, or account from which the expenses were paid. Amounts so credited shall be merged with funds in such appropriation, fund, or account and shall be available for the same purposes and subject to the same limitations as the funds with which merged.

(Added Pub. L. 105–85, div. B, title XXVII, Sec. 2813(a), Nov. 18, 1997, 111 Stat. 1993; amended Pub. L. 106–65, div. B, title XXVIII, Sec. 2813, Oct. 5, 1999, 113 Stat. 851; Pub. L. 107–314, div. B, title XXVIII, Sec. 2812(b), Dec. 2, 2002, 116 Stat. 2709.)

§ 2696. Real property: transfer between armed forces and screening requirements for other Federal use

(a) **TRANSFERS BETWEEN ARMED FORCES.**—If either of the Secretaries concerned requests it and the other approves, real property may be transferred, without compensation, from one armed force to another. Section 2571(d) of this title shall apply to the transfer of real property under this subsection.

(b) SCREENING REQUIREMENTS FOR ADDITIONAL FEDERAL USE.—The Secretary concerned may not convey real property that is authorized or required to be conveyed, whether for or without consideration, by any provision of law enacted after December 31, 1997, unless the Administrator of General Services has screened the property for further Federal use in accordance with subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(c) TIME FOR SCREENING.—(1) Before the end of the 30-day period beginning on the date of the enactment of a provision of law authorizing or requiring the conveyance of a parcel of real property by the Secretary concerned, the Administrator of General Services shall complete the screening referred to in subsection (b) with regard to the real property and notify the Secretary concerned and Congress of the results of the screening. The notice shall include—

(A) the name of the Federal agency requesting transfer of the property;

(B) the proposed use to be made of the property by the Federal agency; and

(C) the fair market value of the property, including any improvements thereon, as estimated by the Administrator.

(2) If the Administrator fails to complete the screening and notify the Secretary and Congress concerned within such period, the Secretary concerned shall proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance.

(d) EFFECT OF SUBMISSION OF NOTICE.—If the Administrator of General Services submits notice under subsection (c)(1) that further Federal use of a parcel of real property is requested by a Federal agency, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance until the end of the 180-day period beginning on the date on which the notice is submitted to Congress.

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of subsection (b) shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

(1) A base closure law.

(2) Chapter 5 of title 40.

(3) Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

(f) SCREENING AND CONVEYANCE OF PROPERTY FOR CORRECTIONAL FACILITIES PURPOSES.—(1) Except as provided in paragraph (2), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary of Defense shall—

(A) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(B) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

(C) if the Attorney General certifies to the Secretary of Defense that a determination has been made by the Director of the Bureau of Justice Assistance within the Department of Justice to utilize the real property or facility under the correctional options program carried out under section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762a), convey the real property or facility, without reimbursement, to a public agency referred to in paragraph (1) or (3) of subsection (a) of such section for such utilization.

(2) Paragraph (1) shall not apply—

(A) to real property and facilities to which title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) is applicable; and

(B) during any portion of a fiscal year after four conveyances have been made under paragraph (1) in such fiscal year.

(Added Pub. L. 105-85, div. B, title XXVIII, Sec. 2814(a)(1), Nov. 18, 1997, 111 Stat. 1994; Pub. L. 106-65, div. A, title X, Sec. 1066(a)(26), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107-217, Sec. 3(b)(16), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 108-136, div. A, title X, Secs. 1031(a)(33), 1043(c)(4), Nov. 24, 2003, 117 Stat. 1600, 1612; Pub. L. 109-364, div. B, title XXVIII, Sec. 2825(a), (b)(5), (c)(3), (d)(2)(A), Oct. 17, 2006, 120 Stat. 2476, 2477.)